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FIA CARD SERVICES, N.A.
7 (erroneously sued as BANK OF
AMERICA, a National Association)

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 LINDA SINGLEY,
12

13 Plaintiff,

14 vs.

15 BANK OF AMERICA, a National
Association ,

16 Defendant.
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Case No. 14-cv-00525-BEN- DHB

**JOINT MOTION FOR STIPULATED
PROTECTIVE ORDER**

Compl. Filed: March 7, 2014

Honorable David H. Bartick

*[Filed concurrently with (Proposed)
Order]*

1 Plaintiff Linda Singley (“Plaintiff”) and Defendant FIA Card Services, N.A.
2 (erroneously sued as BANK OF AMERICA, a National Association)¹ (“Defendant”)
3 (collectively the “Parties”) by and through their respective counsel of record jointly
4 move for a protective order based on the following grounds:

5 WHEREAS, the Parties believe that information relevant to this litigation is
6 confidential, proprietary, and sensitive to business relationships;

7 WHEREAS, the Parties anticipate producing said information that is
8 confidential, proprietary, and sensitive to business relationships during the course of
9 this litigation;

10 NOW, THEREFORE, the Parties jointly move, by and through their counsel of
11 record and subject to the Court’s approval, that:

12 The Stipulated Protective Order agreed to by the Parties, and attached hereto as
13 Exhibit A, be ordered effective by the Court.

14 DATED: September 15, 2014

15 REED SMITH LLP

16 By: /s/ Judith T. Sethna

17 Abraham J. Colman (SBN 146933)

18 Judith T. Sethna (SBN 232731)

19 Attorneys for Defendant

20 FIA CARD SERVICES, N.A. (erroneously
21 sued as BANK OF AMERICA, a National
22 Association)

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26 ¹ FIA Card Services, N.A., a subsidiary of Bank of America Corporation, is the sole
27 entity that issues and administers “Bank of America” brand credit card accounts.
28 Therefore, Bank of America, a National Association is a wrongly-named defendant.

1 DATED: September 15, 2014 HARTMAN LAW OFFICE

2
3 By: /s/ Jared M. Hartman

4 Jared M. Hartman
5 Attorney for Plaintiff
6 LINDA SINGLEY

7 *I, Judith T. Sethna, hereby certify that the content of this document is*
8 *acceptable to all persons required to sign this document and that I obtained the*
9 *authorizations necessary for the electronic signatures of all parties for this document.*

10
11 By /s/ Judith T. Sethna

1. PURPOSES AND LIMITATIONS

2. DEFINITIONS

2.2 “CONFIDENTIAL” Information or Items: any information which is in the possession of a Designating Party who believes in good faith that such information is entitled to confidential treatment under applicable law.

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party
12 to this action but are retained to represent or advise a party to this action and have
13 appeared in this action on behalf of that party or are affiliated with a law firm which
14 has appeared on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
27 from a Producing Party.

28 3. SCOPE

1 The protections conferred by this Stipulation and Order cover not only
2 Protected Material (as defined above), but also (1) any information copied or extracted
3 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
4 Protected Material; and (3) any testimony, conversations, or presentations by Parties
5 or their Counsel that might reveal Protected Material. However, the protections
6 conferred by this Stipulation and Order do not cover the following information: (a)
7 any information that is in the public domain at the time of disclosure to a Receiving
8 Party or becomes part of the public domain after its disclosure to a Receiving Party as
9 a result of publication not involving a violation of this Order, including becoming part
10 of the public record through trial or otherwise; and (b) any information known to the
11 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
12 disclosure from a source who obtained the information lawfully and under no
13 obligation of confidentiality to the Designating Party. Any use of Protected Material
14 at trial shall be governed by a separate agreement or order.

15 4. DURATION

16 Even after final disposition of this litigation, the confidentiality obligations
17 imposed by this Order shall remain in effect until a Designating Party agrees
18 otherwise in writing or a court order otherwise directs. Final disposition shall be
19 deemed to be the later of (1) dismissal of all claims and defenses in this action, with or
20 without prejudice; and (2) final judgment herein after the completion and exhaustion
21 of all appeals, rehearings, remands, trials, or reviews of this action, including the time
22 limits for filing any motions or applications for extension of time pursuant to
23 applicable law.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.

26 Each Party or Non-Party that designates information or items for protection under this
27 Order must take care to limit any such designation to specific material that qualifies
28 under the appropriate standards. The Designating Party must designate for protection

1 only those parts of material, documents, items, or oral or written communications that
2 qualify – so that other portions of the material, documents, items, or communications
3 for which protection is not warranted are not swept unjustifiably within the ambit of
4 this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper
7 purpose (e.g., to unnecessarily encumber or retard the case development process or to
8 impose unnecessary expenses and burdens on other parties) expose the Designating
9 Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it
11 designated for protection do not qualify for protection, that Designating Party must
12 promptly notify all other Parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in
14 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
15 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
16 under this Order must be clearly so designated before the material is disclosed or
17 produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
22 page that contains protected material. If only a portion or portions of the material on a
23 page qualifies for protection, the Producing Party also must clearly identify the
24 protected portion(s) (e.g., by making appropriate markings in the margins). A Party or
25 Non-Party that makes original documents or materials available for inspection will
26 notify the requesting party of the confidentiality of those documents before the
27 inspecting Party has indicated which material it would like copied and produced.
28 During the inspection and before the designation, all of the material made available

1 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
2 identified the documents it wants copied and produced, the Producing Party must
3 determine which documents, or portions thereof, qualify for protection under this
4 Order. Then, before producing the specified documents, the Producing Party must
5 affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If
6 only a portion or portions of the material on a page qualifies for protection, the
7 Producing Party also must clearly identify the protected portion(s) (e.g., by making
8 appropriate markings in the margins).

9 (b) for testimony given in deposition or in other pretrial or trial
10 proceedings, that the Designating Party identify on the record, before the close of the
11 deposition, hearing, or other proceeding, all protected testimony.

12 (c) for information produced in some form other than documentary
13 and for any other tangible items, that the Producing Party affix in a prominent place
14 on the exterior of the container or containers in which the information or item is stored
15 the legend “CONFIDENTIAL.” If only a portion or portions of the information or
16 item warrant protection, the Producing Party, to the extent practicable, shall identify
17 the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive the
20 Designating Party’s right to secure protection under this Order for such material.
21 Upon timely correction of a designation, the Receiving Party must make reasonable
22 efforts to assure that the material is treated in accordance with the provisions of this
23 Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time. Unless a prompt challenge to a Designating
27 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
28 unfairness, unnecessary economic burdens, or a significant disruption or delay of the

1 litigation, a Party does not waive its right to challenge a confidentiality designation by
2 electing not to mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process by providing written notice of each designation it is challenging
5 and describing the basis for each challenge. To avoid ambiguity as to whether a
6 challenge has been made, the written notice must recite that the challenge to
7 confidentiality is being made in accordance with this specific paragraph of the
8 Protective Order. The parties shall attempt to resolve each challenge in good faith and
9 must begin the process by conferring directly (in voice to voice dialogue; other forms
10 of communication are not sufficient) within 14 days of the date of service of notice. If
11 the parties are unable, after diligent efforts, to reach each other by voice within 5 court
12 days, the Challenging Party may in the alternative begin the meet and confer process
13 in writing, identifying therein their attempts to reach the Non-Challenging Party by
14 voice. In conferring, the Challenging Party must explain the basis for its belief that
15 the confidentiality designation was not proper and must give the Designating Party an
16 opportunity to review the designated material, to reconsider the circumstances, and, if
17 no change in designation is offered, to explain the basis for the chosen designation. A
18 Challenging Party may proceed to the next stage of the challenge process only if it has
19 engaged in this meet and confer process first or establishes that the Designating Party
20 is unwilling to participate in the meet and confer process in a timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
22 court intervention, the Challenging Party shall file and serve a motion challenging a
23 confidentiality designation in compliance with the California Code of Civil Procedure,
24 California Rules of Court, and Local Rules for the County of Santa Clara, within 21
25 days of the initial notice of challenge or within 14 days of the parties agreeing that the
26 meet and confer process will not resolve their dispute, whichever is later. Each such
27 motion must be accompanied by a competent declaration affirming that the movant
28 has complied with the meet and confer requirements imposed in the preceding

1 paragraph. Failure by the Challenging Party to make such a motion including the
2 required declaration within 21 days (or 14 days, if applicable) shall automatically
3 waive the confidentiality designation for each challenged designation.

4 6.4 The burden of persuasion in any such challenge proceeding shall be on
5 the Designating Party. Frivolous challenges, and those made for an improper purpose
6 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
7 expose the Challenging Party to sanctions. Unless the Designating Party has waived
8 the confidentiality designation by failing to file a motion to retain confidentiality as
9 described above, all parties shall continue to afford the material in question the level
10 of protection to which it is entitled under the Producing Party's designation until the
11 court rules on the challenge.

12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a Non-Party in connection with this case
15 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
16 Material may be disclosed only to the categories of persons and under the conditions
17 described in this Order. When the litigation has been terminated, a Receiving Party
18 must comply with the provisions of section 13 below (FINAL DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons
21 authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
25 only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as
27 well as employees of said Outside Counsel of Record to whom it is reasonably
28 necessary to disclose the information for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

2 (b) the officers, directors, and employees (including House Counsel)
3 of the Receiving Party to whom disclosure is reasonably necessary for this litigation
4 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
5 A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants,
11 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
12 for this litigation and who have signed the “Acknowledgment and Agreement to Be
13 Bound” (Exhibit A);

14 (f) during their depositions, witnesses in the action to whom
15 disclosure is reasonably necessary and who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
17 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
18 depositions that reveal Protected Material must be separately bound by the court
19 reporter and may not be disclosed to anyone except as permitted under this Stipulated
20 Protective Order.

21 (g) the author or recipient of a document containing the information or
22 a custodian or other person who otherwise possessed or knew the information.

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
24 OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation
26 that compels disclosure of any information or items designated in this action as
27 “CONFIDENTIAL,” that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification

1 shall include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or
3 order to issue in the other litigation that some or all of the material covered by the
4 subpoena or order is subject to this Protective Order. Such notification shall include a
5 copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be
7 pursued by the Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with
9 the subpoena or court order shall not produce any information designated in this
10 action as "CONFIDENTIAL" before a determination by the court from which the
11 subpoena or order issued, unless the Party has obtained the Designating Party's
12 permission. The Designating Party shall bear the burden and expense of seeking
13 protection in that court of its confidential material - and nothing in these provisions
14 should be construed as authorizing or encouraging a Receiving Party in this action to
15 disobey a lawful directive from another court.

16 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
17 IN THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced by
19 a Non-Party in this action and designated as "CONFIDENTIAL." Such information
20 produced by Non-Parties in connection with this litigation is protected by the
21 remedies and relief provided by this Order. Nothing in these provisions should be
22 construed as prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request,
24 to produce a Non-Party's confidential information in its possession, and the Party is
25 subject to an agreement with the Non-Party not to produce the Non-Party's
26 confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the
28 Non-Party that some or all of the information requested is subject to a confidentiality

1 agreement with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the
3 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a
4 reasonably specific description of the information requested; and

5 (3) make the information requested available for inspection by
6 the Non-Party.

7 (c) If the Non-Party fails to object or seek a protective order from this
8 court within 21 days of receiving the notice and accompanying information, the
9 Receiving Party may produce the Non-Party's confidential information responsive to
10 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
11 Party shall not produce any information in its possession or control that is subject to
12 the confidentiality agreement with the Non-Party before a determination by the court.
13 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
14 of seeking protection in this court of its Protected Material.

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
20 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
21 persons to whom unauthorized disclosures were made of all the terms of this Order,
22 and (d) request such person or persons to execute the "Acknowledgment and
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 The inadvertent production by any of the undersigned Parties or non-Parties to
27 the Proceedings of any Confidential Information without a "Confidential" designation,
28 shall be without prejudice to any claim that such item is "Confidential" and such Party

1 shall not be held to have waived any rights by such inadvertent production. In the
2 event that any Confidential Information that is subject to a "Confidential" designation
3 is inadvertently produced without such designation, the Party that inadvertently
4 produced the document shall give written notice of such inadvertent production within
5 twenty (20) days of discovery of the inadvertent production, together with a further
6 copy of the subject Confidential Information designated as "Confidential" (the
7 "Inadvertent Production Notice").

8 Upon receipt of such Inadvertent Production Notice, the Party that received the
9 inadvertently produced Confidential Information shall promptly destroy the
10 inadvertently produced Confidential Information and all copies thereof, or, at the
11 expense of the producing Party, return such together with all copies of such
12 Confidential Information to counsel for the producing Party and shall retain only the
13 "Confidential" designated Materials. Should the receiving Party choose to destroy
14 such inadvertently produced Confidential Information, the receiving Party shall notify
15 the producing Party in writing of such destruction within ten (10) days of receipt of
16 written notice of the inadvertent production. This provision is not intended to apply to
17 any inadvertent production of any Information protected by attorney-client or work
18 product privileges. In the event that this provision conflicts with any applicable law
19 regarding waiver of confidentiality through the inadvertent production of Confidential
20 Information, such law shall govern.

21 **12. MISCELLANEOUS**

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any
28 ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. No document shall be filed under seal unless
2 counsel secures a court order allowing the filing of a document under seal. An
3 application to file a document under seal shall be served on opposing counsel, and on
4 the person or entity that has custody or control of the document, if different from
5 opposing counsel. If opposing counsel, or the person or entity who has custody or
6 control of the document, wishes to oppose the application, he/she must contact the
7 chambers of the judge who will rule on the application, to notify the judge's staff that
8 an opposition to the application will be filed.

9 12.4 The Court may modify the terms and conditions of the Protective Order
10 for good cause, or in the interest of justice, or on its own order at any time in these
11 proceedings.

12 13. FINAL DISPOSITION

13 Within 60 days after the final disposition of this action, as defined in paragraph
14 4, each Receiving Party must return all Protected Material to the Producing Party or
15 destroy such material. As used in this subdivision, "all Protected Material" includes
16 all copies, abstracts, compilations, summaries, and any other format reproducing or
17 capturing any of the Protected Material. Whether the Protected Material is returned or
18 destroyed, the Receiving Party must submit a written certification to the Producing
19 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
20 deadline that (1) identifies (by category, where appropriate) all the Protected Material
21 that was returned or destroyed and (2) affirms that the Receiving Party has not
22 retained any copies, abstracts, compilations, summaries or any other format
23 reproducing or capturing any of the Protected Material. Notwithstanding this
24 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
25 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
26 deposition and trial exhibits, expert reports, attorney work product, and consultant and
27 expert work product, even if such materials contain Protected Material. Any such
28 archival copies that contain or constitute Protected Material remain subject to this

1 Protective Order as set forth in Section 4 (DURATION).

2
3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4
5 DATED: September 15, 2014

REED SMITH LLP

6 By /s/ Judith T. Sethna

7 Judith T. Sethna
8 Attorneys for Defendant
9 FIA CARD SERVICES, N.A. (erroneously
sued as BANK OF AMERICA, a National
Association)

10 DATED: September 15, 2014

HARTMAN LAW OFFICE, INC.

11 By /s/ Jared Hartman

12 Jared Hartman
13 Attorneys for Plaintiff
14 LINDA SINGLEY
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EXHIBIT A
ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [Name – Print or Type], have been given and read a copy of the Protective Order, dated _____, in this case. I understand and will strictly adhere to the contents of said order. I understand that produced material disclosed to me is subject to the order of this Court and that I am prohibited from copying, disclosing or otherwise using such material except as provided by said court order. I understand that unauthorized disclosure of the stamped confidential documents may constitute contempt of court and agree to be subject to personal jurisdiction of this Court for the purpose of enforcing my obligations under this Agreement, the order, and any contempt proceeding that may be instituted for alleged violation thereto. I understand also that my execution of this Agreement to Maintain Confidentiality, indicating my agreement to be bound by said order, is a prerequisite to my review of any produced document and materials.

[Name]